

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

TREVON FOREMAN and LOTISHA
DAVIDSON,

Plaintiffs,

v.

DISTRICT ATTORNEY OF
BAKERSFIELD,

Defendant.

Case No. 1:22-cv-00581-DAD-BAK (SKO)

FINDINGS AND RECOMMENDATIONS
THAT PLAINTIFF TREVON FOREMAN
BE DISMISSED FOR HIS FAILURE TO
COMPLY WITH THE COURTS ORDERS
AND FAILURE TO PROSECUTE

(Docs. 4, 6)

21-DAY DEADLINE

Plaintiffs Trevon Foreman and Lotisha Davidson (“Plaintiffs”) are proceeding *pro se* in this action. Plaintiffs filed their complaint against Defendant District Attorney of Bakersfield on May 16, 2022. (Doc. 1.) On that same date, Plaintiff Foreman, a state prisoner, filed an application to proceed *in forma pauperis* (“IFP”) without prepayment of fees. (Doc. 2.)

On May 20, 2022, the undersigned issued an order finding that Plaintiff Foreman failed to submit to the Court a certified copy of his trust fund account statement, providing him another IFP application form, and directing him to file an amended IFP application that corrects the identified deficiencies within thirty days. (Doc. 4.)

Having received no response from Plaintiff Foreman, the undersigned issued an order to

1 show cause (“OSC”) why he should not be dismissed for his failure to comply with the Court’s order
 2 and for his failure to prosecute this action.¹ (Doc. 6.) Plaintiff Foreman was warned in both the
 3 initial order and the OSC that the failure to comply with the Court’s order would result in a
 4 recommendation to the presiding district judge of dismissal. (*Id.* See also Doc. 4.) Plaintiff
 5 Foreman has not yet filed a response, and the time to do so has passed.

6 The Local Rules, corresponding with Fed. R. Civ. P. 11, provide, “[f]ailure of counsel or of
 7 a party to comply with . . . any order of the Court may be grounds for the imposition by the Court
 8 of any and all sanctions . . . within the inherent power of the Court.” E.D. Cal. Local Rule 110.
 9 “District courts have inherent power to control their dockets,” and in exercising that power, a court
 10 may impose sanctions, including dismissal of an action. *Thompson v. Housing Authority of Los*
 11 *Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action with prejudice based on
 12 a party’s failure to prosecute an action or failure to obey a court order, or failure to comply with
 13 local rules. See, e.g., *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for
 14 failure to comply with an order requiring amendment of complaint); *Malone v. U.S. Postal Service*,
 15 833 F.2d 128, 130 (9th Cir. 1987) (dismissal for failure to comply with a court order); *Henderson*
 16 *v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply
 17 with local rules).

18 Based on Plaintiff Foreman’s failure to comply with, or otherwise respond to the Court’s
 19 orders, or pay the required filing fee, there is no alternative but to recommend that Plaintiff Foreman
 20 be dismissed from this action.

21 Accordingly, it is **HEREBY RECOMMENDED** that Plaintiff Trevon Foreman be
 22 dismissed from this case without prejudice for his failure to obey the Court’s orders and to prosecute
 23 this action.

24 These Findings and Recommendations will be submitted to the United States District Judge

25 ¹ Plaintiff Lotisha Davidson filed her own application to proceed in forma pauperis, but it contains information related
 26 to only her finances. (See Doc. 5.) “Where there are multiple plaintiffs in a single action, the plaintiffs may not proceed
 27 in forma pauperis unless *all* of them demonstrate inability to pay the filing fee.” *Darden v. Indymac Bancorp, Inc.*, No.
 28 CIV S-09-2970 JAM DAD, 2009 WL 5206637, at *1 (E.D. Cal. Dec. 23, 2009) (emphasis added); see also *Anderson*
v. California, No. 10 CV 2216 MMA (AJB), 2010 WL 4316996, at *1 (S.D. Cal. Oct. 27, 2010) (“[A]lthough only one
 filing fee needs to be paid per case, if multiple plaintiffs seek to proceed in forma pauperis, each plaintiff must qualify
 for IFP status.”).

1 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1)(B). **Within twenty-**
2 **one (21) days** after being served with these Findings and Recommendations, any plaintiff may file
3 written objections with the Court. The document should be captioned “Objections to Magistrate
4 Judge’s Findings and Recommendations.” Plaintiffs are advised that failure to file objections within
5 the specified time may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834,
6 839 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

7
8 IT IS SO ORDERED.

9 Dated: **July 22, 2022**

/s/ Sheila K. Oberto
UNITED STATES MAGISTRATE JUDGE